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SERVICE DATE – OCTOBER 25, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 392X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
HARTFORD CITY, IND.

Decided: October 25, 2017

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 0.2-mile rail line between milepost RK 138.6 and milepost 138.8 in Hartford City, Ind. (the Line).¹ Notice of the exemption was served and published in the Federal Register on August 21, 2017 (82 Fed. Reg. 39,644). The exemption became effective on September 20, 2017.²

On September 20, 2017, the Indiana Trails Fund (ITF) late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with NSR for acquisition of the Line as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28.³

In a letter filed on September 21, 2017, NSR states that it is not willing to negotiate an interim trail use arrangement for the Line and that it also opposes the request for a public use condition. In a letter filed on October 3, 2017, the City of Hartford City (City) states that it does not oppose a trail through this corridor but requests that the proposed abandonment not be delayed.

¹ In the same jointly filed verified notice, Central Railroad Company of Indianapolis (CERA) sought Board authorization to discontinue service over the Line. Cent. R.R. Co. of Ind.—Discontinuance of Lease & Operation Auth.—in Hartford City, Ind., AB 511 (Sub-No. 7X). The Line is a portion of a 15.9-mile line that CERA was authorized to lease and operate pursuant to an agreement with NSR. See Cent. R.R. Co. of Ind.—Lease & Operation Exemption—Norfolk S. Ry., FD 35300 (STB served Oct. 21, 2009).

² The exemption is subject to standard employee protective conditions and an environmental condition related to salvage. Norfolk S. Ry.—Aban. Exemption—in Hartford City, Ind., AB 290 (Sub-No. 392X) (STB served Sept. 19, 2017).

³ Requests for interim trail use/rail banking were due by August 31, 2017, and requests for a public use condition by September 8. Norfolk S. Ry.—Aban. Exemption—in Hartford City, Ind., AB 290 (Sub-No. 392X) (STB served Aug. 21, 2017).

Under the Trails Act, the trail use program is voluntary and consensual between the railroad and the trail sponsor. See 49 C.F.R. § 1152.29; Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988); Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Because NSR is not willing to negotiate for interim trail use, the Board cannot issue a NITU, and ITF's request for a NITU will be denied.

The late request for a public use condition also will be denied. The City states that it has been working for nearly two years toward the abandonment, which will help facilitate future City plans to connect an existing roadway (Wabash Avenue) that ends on both sides of the tracks. The City states that this connection will allow for faster emergency responses and a much-needed connection for schools, business parks, and the citizens in general. The City states that any delay in the abandonment could impact the safety and betterment of the community. Under the circumstances, a public use condition would delay consummation of the abandonment and thus could delay the City's plans.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. IFT's late-filed requests for a NITU and for a public use condition are denied.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.